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FILE: B-186356

DATE: June 16, 1976

MATTER OF: Rambusch Decorating Company

DIGEST:

1. Increased cost of performance of contract for manufacture and delivery of brass chandelier as result of contractor's need to use foundry and pattern maker other than those originally intended provides no basis for equitable price adjustment of fixed-price contract, which contains no escalation provisions, since those factors do not constitute undue interference by Government as contractor.
2. Contractor's request for increase in contract price on ground that it had erroneously estimated its cost is denied, since mistake was unilateral, and GAO cannot conclude that contracting officer was on constructive notice of possible error.

The Architect of the Capitol has forwarded for our consideration a request by Rambusch Decorating Company (Rambusch) for relief for losses allegedly incurred in the performance of a contract, at the fixed price of \$33,725, for the manufacture and delivery of a brass chandelier for the Old Senate Chamber. The bases for Rambusch's request are that: the foundry which was to cast the chandelier could not perform and Rambusch had to find a substitute foundry which required it to incur unforeseen cost in cleaning the castings; Rambusch's original pattern maker became ill and the new pattern maker's cost was \$1,500 more expensive; Rambusch was allegedly requested to use stainless steel pipe rather than less expensive regular steel pipe; and Rambusch's estimator "* * * made a mistake in figuring the spinings as he estimated them in bronze figuring the price would be the same as in brass. * * *"

The subject contract contains no escalation provisions. It is a well-settled proposition that where a Government contract contains an express stipulation as to the amount of compensation to be paid, and no provision is made for any increase in the event performance becomes more expensive or difficult, the fact that the cost of performance is increased by factors which do not constitute undue interference by the Government as a contractor provides no basis for equitable price relief. 53 Comp. Gen. 157 (1973); AMCA International Corporation, B-182233, October 3, 1974, 74-2 CPD 188. As was stated in Penn Bridge Co. v. United States, 59 Ct. Cl. 892, 896 (1924):

"* * * Contractual rights once fixed in a proper contract executed by authority are inviolate. They may be forfeited by one party or the other, construction is permissible if the terms are ambiguous, but in the absence of ambiguity or forfeiture of rights by conduct, such a contract cannot but be enforced as written." (Emphasis supplied.)

Thus, Rambusch must bear the additional costs which resulted from its use of a substitute foundry and a new pattern maker.

Concerning the use of stainless steel pipe rather than regular steel pipe, specification number 10 of the contract provides that "[t]he stem above the chandelier shall be of 1-1/2 inch extra heavy stainless steel pipe with brass slip tubing to cover it." Thus, there is no basis to support Rambusch's claim on this matter.

Finally, regarding Rambusch's allegedly mistaken estimate, the sole responsibility for the preparation of a bid or offer rests with the bidder or offeror. See B-166734, May 9, 1969; See 48 Comp. Gen. 672 (1969). Therefore, if Rambusch's estimate was in error, such error was the result of its own negligence or oversight. The general rule is that if a bidder or offeror has made a mistake in its bid or offer that was neither induced nor shared by the Government, the bidder or offeror must bear the consequences of its mistake unless the contracting officer was on actual or constructive notice of the error prior to award. Titan Environmental Construction Systems, Inc., B-180329, October 1, 1974, 74-2 CPD 187; 48 Comp. Gen. 672 (1969). Since there is no evidence that the contracting officer knew or should have known that Rambusch's estimate was incorrect, there is no legal authority for our Office to grant the relief requested.

Deputy


Comptroller General
of the United States